

EXHIBIT 5

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13

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17
18 EBAY INC.,) CASE NO. CV 08-4052 JF (PVT)
19 Plaintiff,) ANSWER TO SECOND AMENDED
20 vs.) COMPLAINT
21 DIGITAL POINT SOLUTIONS, INC.;) Hon. Jeremy Fogel presiding
22 SHAWN HOGAN; KESSLER's FLYING)
22 CIRCUS; THUNDERWOOD HOLDINGS,)
23 INC.; TODD DUNNING; DUNNING)
23 ENTERPRISES, INC.; BRIAN DUNNING;)
24 BRIANDUNNING.COM; and DOES 1-20,)
25 Defendants.)
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1 Defendants Kessler's Flying Circus, Thunderwood Holdings, Inc., Brian
2 Dunning and BrianDunning.com (collectively, "Defendants") for their answer to the Second
3 Amended Complaint ("SAC") of Plaintiff eBay, Inc. ("Plaintiff" and/or "eBay"), admit, deny
4 and allege as follows:

5 **ANSWER**

6 **PARTIES**

7 1. In response to paragraph 1 of the SAC, Defendants hereby assert the
8 privilege against self-incrimination under the Fifth Amendment of the United States
9 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
10 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
11 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
12 the assertion of the privilege, to seek leave to amend and/or supplement this response
13 accordingly, and to object to the use or disclosure of this response for any purpose.

14 2. In response to paragraph 2 of the SAC, Defendants hereby assert the
15 privilege against self-incrimination under the Fifth Amendment of the United States
16 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
17 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
18 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
19 the assertion of the privilege, to seek leave to amend and/or supplement this response
20 accordingly, and to object to the use or disclosure of this response for any purpose.

21 3. In response to paragraph 3 of the SAC, Defendants hereby assert the
22 privilege against self-incrimination under the Fifth Amendment of the United States
23 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
24 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
25 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
26 the assertion of the privilege, to seek leave to amend and/or supplement this response
27 accordingly, and to object to the use or disclosure of this response for any purpose.

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1 4. In response to paragraph 4 of the SAC, Defendants hereby assert the
2 privilege against self-incrimination under the Fifth Amendment of the United States
3 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
4 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
5 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
6 the assertion of the privilege, to seek leave to amend and/or supplement this response
7 accordingly, and to object to the use or disclosure of this response for any purpose.

8 5. In response to paragraph 5 of the SAC, Defendants hereby assert the
9 privilege against self-incrimination under the Fifth Amendment of the United States
10 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
11 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
12 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
13 the assertion of the privilege, to seek leave to amend and/or supplement this response
14 accordingly, and to object to the use or disclosure of this response for any purpose.

15 6. In response to paragraph 6 of the SAC, Defendants hereby assert the
16 privilege against self-incrimination under the Fifth Amendment of the United States
17 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
18 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
19 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
20 the assertion of the privilege, to seek leave to amend and/or supplement this response
21 accordingly, and to object to the use or disclosure of this response for any purpose.

22 7. In response to paragraph 7 of the SAC, Defendants hereby assert the
23 privilege against self-incrimination under the Fifth Amendment of the United States
24 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
25 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
26 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
27 the assertion of the privilege, to seek leave to amend and/or supplement this response
28 accordingly, and to object to the use or disclosure of this response for any purpose.

1 8. In response to paragraph 8 of the SAC, Defendants hereby assert the
2 privilege against self-incrimination under the Fifth Amendment of the United States
3 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
4 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
5 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
6 the assertion of the privilege, to seek leave to amend and/or supplement this response
7 accordingly, and to object to the use or disclosure of this response for any purpose.

8 9. In response to paragraph 9 of the SAC, Defendants hereby assert the
9 privilege against self-incrimination under the Fifth Amendment of the United States
10 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
11 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
12 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
13 the assertion of the privilege, to seek leave to amend and/or supplement this response
14 accordingly, and to object to the use or disclosure of this response for any purpose.

15 10. In response to paragraph 10 of the SAC, Defendants hereby assert the
16 privilege against self-incrimination under the Fifth Amendment of the United States
17 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
18 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
19 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
20 the assertion of the privilege, to seek leave to amend and/or supplement this response
21 accordingly, and to object to the use or disclosure of this response for any purpose.

22 11. In response to paragraph 11 of the SAC, Defendants hereby assert the
23 privilege against self-incrimination under the Fifth Amendment of the United States
24 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
25 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
26 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
27 the assertion of the privilege, to seek leave to amend and/or supplement this response
28 accordingly, and to object to the use or disclosure of this response for any purpose.

1 12. In response to paragraph 12 of the SAC, Defendants hereby assert the
2 privilege against self-incrimination under the Fifth Amendment of the United States
3 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
4 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
5 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
6 the assertion of the privilege, to seek leave to amend and/or supplement this response
7 accordingly, and to object to the use or disclosure of this response for any purpose.

8 13. In response to paragraph 13 of the SAC, Defendants hereby assert the
9 privilege against self-incrimination under the Fifth Amendment of the United States
10 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
11 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
12 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
13 the assertion of the privilege, to seek leave to amend and/or supplement this response
14 accordingly, and to object to the use or disclosure of this response for any purpose.

15 **JURISDICTION AND VENUE**

16 14. In response to paragraph 14 of the SAC, Defendants hereby assert the
17 privilege against self-incrimination under the Fifth Amendment of the United States
18 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
19 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
20 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
21 the assertion of the privilege, to seek leave to amend and/or supplement this response
22 accordingly, and to object to the use or disclosure of this response for any purpose.

23 15. In response to paragraph 15 of the SAC, Defendants hereby assert the
24 privilege against self-incrimination under the Fifth Amendment of the United States
25 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
26 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
27 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw

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1 the assertion of the privilege, to seek leave to amend and/or supplement this response
2 accordingly, and to object to the use or disclosure of this response for any purpose.

3 16. In response to paragraph 16 of the SAC, Defendants hereby assert the
4 privilege against self-incrimination under the Fifth Amendment of the United States
5 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
6 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
7 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
8 the assertion of the privilege, to seek leave to amend and/or supplement this response
9 accordingly, and to object to the use or disclosure of this response for any purpose.

10 **INTRADISTRICT ASSIGNMENT**

11 17. In response to paragraph 17 of the SAC, Defendants hereby assert the
12 privilege against self-incrimination under the Fifth Amendment of the United States
13 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
14 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
15 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
16 the assertion of the privilege, to seek leave to amend and/or supplement this response
17 accordingly, and to object to the use or disclosure of this response for any purpose.

18 **GENERAL ALLEGATIONS**

19 18. In response to paragraph 18 of the SAC, Defendants hereby assert the
20 privilege against self-incrimination under the Fifth Amendment of the United States
21 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
22 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
23 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
24 the assertion of the privilege, to seek leave to amend and/or supplement this response
25 accordingly, and to object to the use or disclosure of this response for any purpose.

26 19. In response to paragraph 19 of the SAC, Defendants hereby assert the
27 privilege against self-incrimination under the Fifth Amendment of the United States
28 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,

1 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
2 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
3 the assertion of the privilege, to seek leave to amend and/or supplement this response
4 accordingly, and to object to the use or disclosure of this response for any purpose.

5 20. In response to paragraph 20 of the SAC, Defendants hereby assert the
6 privilege against self-incrimination under the Fifth Amendment of the United States
7 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
8 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
9 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
10 the assertion of the privilege, to seek leave to amend and/or supplement this response
11 accordingly, and to object to the use or disclosure of this response for any purpose.

12 21. In response to paragraph 21 of the SAC, Defendants hereby assert the
13 privilege against self-incrimination under the Fifth Amendment of the United States
14 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
15 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
16 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
17 the assertion of the privilege, to seek leave to amend and/or supplement this response
18 accordingly, and to object to the use or disclosure of this response for any purpose.

19 22. In response to paragraph 22 of the SAC, Defendants hereby assert the
20 privilege against self-incrimination under the Fifth Amendment of the United States
21 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
22 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
23 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
24 the assertion of the privilege, to seek leave to amend and/or supplement this response
25 accordingly, and to object to the use or disclosure of this response for any purpose.

26 23. In response to paragraph 23 of the SAC, Defendants hereby assert the
27 privilege against self-incrimination under the Fifth Amendment of the United States
28 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,

1 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
2 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
3 the assertion of the privilege, to seek leave to amend and/or supplement this response
4 accordingly, and to object to the use or disclosure of this response for any purpose.

5 24. In response to paragraph 24 of the SAC, Defendants hereby assert the
6 privilege against self-incrimination under the Fifth Amendment of the United States
7 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
8 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
9 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
10 the assertion of the privilege, to seek leave to amend and/or supplement this response
11 accordingly, and to object to the use or disclosure of this response for any purpose.

12 25. In response to paragraph 25 of the SAC, Defendants hereby assert the
13 privilege against self-incrimination under the Fifth Amendment of the United States
14 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
15 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
16 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
17 the assertion of the privilege, to seek leave to amend and/or supplement this response
18 accordingly, and to object to the use or disclosure of this response for any purpose.

19 26. In response to paragraph 26 of the SAC, Defendants hereby assert the
20 privilege against self-incrimination under the Fifth Amendment of the United States
21 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
22 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
23 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
24 the assertion of the privilege, to seek leave to amend and/or supplement this response
25 accordingly, and to object to the use or disclosure of this response for any purpose.

26 27. In response to paragraph 27 of the SAC, Defendants hereby assert the
27 privilege against self-incrimination under the Fifth Amendment of the United States
28 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,

1 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
2 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
3 the assertion of the privilege, to seek leave to amend and/or supplement this response
4 accordingly, and to object to the use or disclosure of this response for any purpose.

5 28. In response to paragraph 28 of the SAC, Defendants hereby assert the
6 privilege against self-incrimination under the Fifth Amendment of the United States
7 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
8 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
9 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
10 the assertion of the privilege, to seek leave to amend and/or supplement this response
11 accordingly, and to object to the use or disclosure of this response for any purpose.

12 29. In response to paragraph 29 of the SAC, Defendants hereby assert the
13 privilege against self-incrimination under the Fifth Amendment of the United States
14 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
15 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
16 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
17 the assertion of the privilege, to seek leave to amend and/or supplement this response
18 accordingly, and to object to the use or disclosure of this response for any purpose.

19 30. In response to paragraph 30 of the SAC, Defendants hereby assert the
20 privilege against self-incrimination under the Fifth Amendment of the United States
21 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
22 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
23 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
24 the assertion of the privilege, to seek leave to amend and/or supplement this response
25 accordingly, and to object to the use or disclosure of this response for any purpose.

26 31. In response to paragraph 31 of the SAC, Defendants hereby assert the
27 privilege against self-incrimination under the Fifth Amendment of the United States
28 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,

1 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
2 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
3 the assertion of the privilege, to seek leave to amend and/or supplement this response
4 accordingly, and to object to the use or disclosure of this response for any purpose.

5 32. In response to paragraph 32 of the SAC, Defendants hereby assert the
6 privilege against self-incrimination under the Fifth Amendment of the United States
7 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
8 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
9 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
10 the assertion of the privilege, to seek leave to amend and/or supplement this response
11 accordingly, and to object to the use or disclosure of this response for any purpose.

12 33. In response to paragraph 33 of the SAC, Defendants hereby assert the
13 privilege against self-incrimination under the Fifth Amendment of the United States
14 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
15 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
16 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
17 the assertion of the privilege, to seek leave to amend and/or supplement this response
18 accordingly, and to object to the use or disclosure of this response for any purpose.

19 34. In response to paragraph 34 of the SAC, Defendants hereby assert the
20 privilege against self-incrimination under the Fifth Amendment of the United States
21 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
22 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
23 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
24 the assertion of the privilege, to seek leave to amend and/or supplement this response
25 accordingly, and to object to the use or disclosure of this response for any purpose.

26 **FIRST CAUSE OF ACTION**

27 35. In response to paragraph 35 of the SAC, Defendants hereby assert the
28 privilege against self-incrimination under the Fifth Amendment of the United States

1 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
2 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
3 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
4 the assertion of the privilege, to seek leave to amend and/or supplement this response
5 accordingly, and to object to the use or disclosure of this response for any purpose.

6 36. In response to paragraph 36 of the SAC, Defendants hereby assert the
7 privilege against self-incrimination under the Fifth Amendment of the United States
8 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
9 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
10 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
11 the assertion of the privilege, to seek leave to amend and/or supplement this response
12 accordingly, and to object to the use or disclosure of this response for any purpose.

13 37. In response to paragraph 37 of the SAC, Defendants hereby assert the
14 privilege against self-incrimination under the Fifth Amendment of the United States
15 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
16 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
17 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
18 the assertion of the privilege, to seek leave to amend and/or supplement this response
19 accordingly, and to object to the use or disclosure of this response for any purpose.

20 38. In response to paragraph 38 of the SAC, Defendants hereby assert the
21 privilege against self-incrimination under the Fifth Amendment of the United States
22 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
23 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
24 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
25 the assertion of the privilege, to seek leave to amend and/or supplement this response
26 accordingly, and to object to the use or disclosure of this response for any purpose.

27 39. In response to paragraph 39 of the SAC, Defendants hereby assert the
28 privilege against self-incrimination under the Fifth Amendment of the United States

1 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
2 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
3 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
4 the assertion of the privilege, to seek leave to amend and/or supplement this response
5 accordingly, and to object to the use or disclosure of this response for any purpose.

6 40. In response to paragraph 40 of the SAC, Defendants hereby assert the
7 privilege against self-incrimination under the Fifth Amendment of the United States
8 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
9 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
10 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
11 the assertion of the privilege, to seek leave to amend and/or supplement this response
12 accordingly, and to object to the use or disclosure of this response for any purpose.

13 41. In response to paragraph 41 of the SAC, Defendants hereby assert the
14 privilege against self-incrimination under the Fifth Amendment of the United States
15 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
16 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
17 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
18 the assertion of the privilege, to seek leave to amend and/or supplement this response
19 accordingly, and to object to the use or disclosure of this response for any purpose.

20 42. In response to paragraph 42 of the SAC, Defendants hereby assert the
21 privilege against self-incrimination under the Fifth Amendment of the United States
22 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
23 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
24 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
25 the assertion of the privilege, to seek leave to amend and/or supplement this response
26 accordingly, and to object to the use or disclosure of this response for any purpose.

27 43. In response to paragraph 43 of the SAC, Defendants hereby assert the
28 privilege against self-incrimination under the Fifth Amendment of the United States

1 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
2 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
3 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
4 the assertion of the privilege, to seek leave to amend and/or supplement this response
5 accordingly, and to object to the use or disclosure of this response for any purpose.

6 44. In response to paragraph 44 of the SAC, Defendants hereby assert the
7 privilege against self-incrimination under the Fifth Amendment of the United States
8 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
9 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
10 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
11 the assertion of the privilege, to seek leave to amend and/or supplement this response
12 accordingly, and to object to the use or disclosure of this response for any purpose.

13 **SECOND CAUSE OF ACTION**

14 45. In response to paragraph 45 of the SAC, Defendants hereby assert the
15 privilege against self-incrimination under the Fifth Amendment of the United States
16 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
17 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
18 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
19 the assertion of the privilege, to seek leave to amend and/or supplement this response
20 accordingly, and to object to the use or disclosure of this response for any purpose.

21 46. In response to paragraph 46 of the SAC, Defendants hereby assert the
22 privilege against self-incrimination under the Fifth Amendment of the United States
23 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
24 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
25 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
26 the assertion of the privilege, to seek leave to amend and/or supplement this response
27 accordingly, and to object to the use or disclosure of this response for any purpose.

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1 47. In response to paragraph 47 of the SAC, Defendants hereby assert the
2 privilege against self-incrimination under the Fifth Amendment of the United States
3 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
4 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
5 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
6 the assertion of the privilege, to seek leave to amend and/or supplement this response
7 accordingly, and to object to the use or disclosure of this response for any purpose.

8 48. In response to paragraph 48 of the SAC, Defendants hereby assert the
9 privilege against self-incrimination under the Fifth Amendment of the United States
10 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
11 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
12 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
13 the assertion of the privilege, to seek leave to amend and/or supplement this response
14 accordingly, and to object to the use or disclosure of this response for any purpose.

15 49. In response to paragraph 49 of the SAC, Defendants hereby assert the
16 privilege against self-incrimination under the Fifth Amendment of the United States
17 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
18 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
19 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
20 the assertion of the privilege, to seek leave to amend and/or supplement this response
21 accordingly, and to object to the use or disclosure of this response for any purpose.

22 50. In response to paragraph 50 of the SAC, Defendants hereby assert the
23 privilege against self-incrimination under the Fifth Amendment of the United States
24 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
25 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
26 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
27 the assertion of the privilege, to seek leave to amend and/or supplement this response
28 accordingly, and to object to the use or disclosure of this response for any purpose.

1 51. In response to paragraph 51 of the SAC, Defendants hereby assert the
2 privilege against self-incrimination under the Fifth Amendment of the United States
3 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
4 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
5 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
6 the assertion of the privilege, to seek leave to amend and/or supplement this response
7 accordingly, and to object to the use or disclosure of this response for any purpose.

8 52. In response to paragraph 52 of the SAC, Defendants hereby assert the
9 privilege against self-incrimination under the Fifth Amendment of the United States
10 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
11 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
12 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
13 the assertion of the privilege, to seek leave to amend and/or supplement this response
14 accordingly, and to object to the use or disclosure of this response for any purpose.

15 53. In response to paragraph 53 of the SAC, Defendants hereby assert the
16 privilege against self-incrimination under the Fifth Amendment of the United States
17 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
18 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
19 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
20 the assertion of the privilege, to seek leave to amend and/or supplement this response
21 accordingly, and to object to the use or disclosure of this response for any purpose.

22 54. In response to paragraph 54 of the SAC, Defendants hereby assert the
23 privilege against self-incrimination under the Fifth Amendment of the United States
24 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
25 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
26 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
27 the assertion of the privilege, to seek leave to amend and/or supplement this response
28 accordingly, and to object to the use or disclosure of this response for any purpose.

1 55. In response to paragraph 55 of the SAC, Defendants hereby assert the
2 privilege against self-incrimination under the Fifth Amendment of the United States
3 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
4 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
5 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
6 the assertion of the privilege, to seek leave to amend and/or supplement this response
7 accordingly, and to object to the use or disclosure of this response for any purpose.

8 56. In response to paragraph 56 of the SAC, Defendants hereby assert the
9 privilege against self-incrimination under the Fifth Amendment of the United States
10 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
11 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
12 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
13 the assertion of the privilege, to seek leave to amend and/or supplement this response
14 accordingly, and to object to the use or disclosure of this response for any purpose.

15 57. In response to paragraph 57 of the SAC, Defendants hereby assert the
16 privilege against self-incrimination under the Fifth Amendment of the United States
17 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
18 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
19 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
20 the assertion of the privilege, to seek leave to amend and/or supplement this response
21 accordingly, and to object to the use or disclosure of this response for any purpose.

22 58. In response to paragraph 58 of the SAC, Defendants hereby assert the
23 privilege against self-incrimination under the Fifth Amendment of the United States
24 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
25 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
26 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
27 the assertion of the privilege, to seek leave to amend and/or supplement this response
28 accordingly, and to object to the use or disclosure of this response for any purpose.

1 59. In response to paragraph 59 of the SAC, Defendants hereby assert the
2 privilege against self-incrimination under the Fifth Amendment of the United States
3 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
4 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
5 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
6 the assertion of the privilege, to seek leave to amend and/or supplement this response
7 accordingly, and to object to the use or disclosure of this response for any purpose.

8 60. In response to paragraph 60 of the SAC, Defendants hereby assert the
9 privilege against self-incrimination under the Fifth Amendment of the United States
10 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
11 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
12 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
13 the assertion of the privilege, to seek leave to amend and/or supplement this response
14 accordingly, and to object to the use or disclosure of this response for any purpose.

15 61. In response to paragraph 61 of the SAC, Defendants hereby assert the
16 privilege against self-incrimination under the Fifth Amendment of the United States
17 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
18 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
19 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
20 the assertion of the privilege, to seek leave to amend and/or supplement this response
21 accordingly, and to object to the use or disclosure of this response for any purpose.

22 62. In response to paragraph 62 of the SAC, Defendants hereby assert the
23 privilege against self-incrimination under the Fifth Amendment of the United States
24 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
25 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
26 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
27 the assertion of the privilege, to seek leave to amend and/or supplement this response
28 accordingly, and to object to the use or disclosure of this response for any purpose.

1 63. In response to paragraph 63 of the SAC, Defendants hereby assert the
2 privilege against self-incrimination under the Fifth Amendment of the United States
3 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
4 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
5 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
6 the assertion of the privilege, to seek leave to amend and/or supplement this response
7 accordingly, and to object to the use or disclosure of this response for any purpose.

8 64. In response to paragraph 64 of the SAC, Defendants hereby assert the
9 privilege against self-incrimination under the Fifth Amendment of the United States
10 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
11 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
12 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
13 the assertion of the privilege, to seek leave to amend and/or supplement this response
14 accordingly, and to object to the use or disclosure of this response for any purpose.

15 **THIRD CAUSE OF ACTION**

16 65. In response to paragraph 65 of the SAC, Defendants hereby assert the
17 privilege against self-incrimination under the Fifth Amendment of the United States
18 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
19 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
20 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
21 the assertion of the privilege, to seek leave to amend and/or supplement this response
22 accordingly, and to object to the use or disclosure of this response for any purpose.

23 66. In response to paragraph 66 of the SAC, Defendants hereby assert the
24 privilege against self-incrimination under the Fifth Amendment of the United States
25 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
26 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
27 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw

28 / / /

1 the assertion of the privilege, to seek leave to amend and/or supplement this response
2 accordingly, and to object to the use or disclosure of this response for any purpose.

3 67. In response to paragraph 67 of the SAC, Defendants hereby assert the
4 privilege against self-incrimination under the Fifth Amendment of the United States
5 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
6 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
7 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
8 the assertion of the privilege, to seek leave to amend and/or supplement this response
9 accordingly, and to object to the use or disclosure of this response for any purpose.

10 68. In response to paragraph 68 of the SAC, Defendants hereby assert the
11 privilege against self-incrimination under the Fifth Amendment of the United States
12 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
13 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
14 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
15 the assertion of the privilege, to seek leave to amend and/or supplement this response
16 accordingly, and to object to the use or disclosure of this response for any purpose.

17 69. In response to paragraph 69 of the SAC, Defendants hereby assert the
18 privilege against self-incrimination under the Fifth Amendment of the United States
19 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
20 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
21 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
22 the assertion of the privilege, to seek leave to amend and/or supplement this response
23 accordingly, and to object to the use or disclosure of this response for any purpose.

24 70. In response to paragraph 70 of the SAC, Defendants hereby assert the
25 privilege against self-incrimination under the Fifth Amendment of the United States
26 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
27 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
28 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw

1 the assertion of the privilege, to seek leave to amend and/or supplement this response
2 accordingly, and to object to the use or disclosure of this response for any purpose.

3 71. In response to paragraph 71 of the SAC, Defendants hereby assert the
4 privilege against self-incrimination under the Fifth Amendment of the United States
5 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
6 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
7 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
8 the assertion of the privilege, to seek leave to amend and/or supplement this response
9 accordingly, and to object to the use or disclosure of this response for any purpose.

10 72. In response to paragraph 72 of the SAC, Defendants hereby assert the
11 privilege against self-incrimination under the Fifth Amendment of the United States
12 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
13 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
14 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
15 the assertion of the privilege, to seek leave to amend and/or supplement this response
16 accordingly, and to object to the use or disclosure of this response for any purpose.

17 73. In response to paragraph 73 of the SAC, Defendants hereby assert the
18 privilege against self-incrimination under the Fifth Amendment of the United States
19 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
20 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
21 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
22 the assertion of the privilege, to seek leave to amend and/or supplement this response
23 accordingly, and to object to the use or disclosure of this response for any purpose.

24 74. In response to paragraph 74 of the SAC, Defendants hereby assert the
25 privilege against self-incrimination under the Fifth Amendment of the United States
26 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
27 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
28 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw

1 the assertion of the privilege, to seek leave to amend and/or supplement this response
2 accordingly, and to object to the use or disclosure of this response for any purpose.

3 75. In response to paragraph 75 of the SAC, Defendants hereby assert the
4 privilege against self-incrimination under the Fifth Amendment of the United States
5 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
6 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
7 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
8 the assertion of the privilege, to seek leave to amend and/or supplement this response
9 accordingly, and to object to the use or disclosure of this response for any purpose.

FOURTH CAUSE OF ACTION

10 76. In response to paragraph 76 of the SAC, Defendants hereby assert the
11 privilege against self-incrimination under the Fifth Amendment of the United States
12 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
13 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
14 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
15 the assertion of the privilege, to seek leave to amend and/or supplement this response
16 accordingly, and to object to the use or disclosure of this response for any purpose.

17 77. In response to paragraph 77 of the SAC, Defendants hereby assert the
18 privilege against self-incrimination under the Fifth Amendment of the United States
19 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
20 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
21 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
22 the assertion of the privilege, to seek leave to amend and/or supplement this response
23 accordingly, and to object to the use or disclosure of this response for any purpose.

24 78. In response to paragraph 78 of the SAC, Defendants hereby assert the
25 privilege against self-incrimination under the Fifth Amendment of the United States
26 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
27 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
28

1 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
2 the assertion of the privilege, to seek leave to amend and/or supplement this response
3 accordingly, and to object to the use or disclosure of this response for any purpose.

4 79. In response to paragraph 79 of the SAC, Defendants hereby assert the
5 privilege against self-incrimination under the Fifth Amendment of the United States
6 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
7 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
8 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
9 the assertion of the privilege, to seek leave to amend and/or supplement this response
10 accordingly, and to object to the use or disclosure of this response for any purpose.

11 80. In response to paragraph 80 of the SAC, Defendants hereby assert the
12 privilege against self-incrimination under the Fifth Amendment of the United States
13 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
14 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
15 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
16 the assertion of the privilege, to seek leave to amend and/or supplement this response
17 accordingly, and to object to the use or disclosure of this response for any purpose.

18 81. In response to paragraph 81 of the SAC, Defendants hereby assert the
19 privilege against self-incrimination under the Fifth Amendment of the United States
20 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
21 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
22 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
23 the assertion of the privilege, to seek leave to amend and/or supplement this response
24 accordingly, and to object to the use or disclosure of this response for any purpose.

25 82. In response to paragraph 82 of the SAC, Defendants hereby assert the
26 privilege against self-incrimination under the Fifth Amendment of the United States
27 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
28 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that

1 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
2 the assertion of the privilege, to seek leave to amend and/or supplement this response
3 accordingly, and to object to the use or disclosure of this response for any purpose.

4 83. In response to paragraph 83 of the SAC, Defendants hereby assert the
5 privilege against self-incrimination under the Fifth Amendment of the United States
6 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
7 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
8 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
9 the assertion of the privilege, to seek leave to amend and/or supplement this response
10 accordingly, and to object to the use or disclosure of this response for any purpose.

11 84. In response to paragraph 84 of the SAC, Defendants hereby assert the
12 privilege against self-incrimination under the Fifth Amendment of the United States
13 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
14 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
15 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
16 the assertion of the privilege, to seek leave to amend and/or supplement this response
17 accordingly, and to object to the use or disclosure of this response for any purpose.

18 85. In response to paragraph 85 of the SAC, Defendants hereby assert the
19 privilege against self-incrimination under the Fifth Amendment of the United States
20 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
21 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
22 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
23 the assertion of the privilege, to seek leave to amend and/or supplement this response
24 accordingly, and to object to the use or disclosure of this response for any purpose.

25 86. In response to paragraph 86 of the SAC, Defendants hereby assert the
26 privilege against self-incrimination under the Fifth Amendment of the United States
27 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
28 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that

1 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
2 the assertion of the privilege, to seek leave to amend and/or supplement this response
3 accordingly, and to object to the use or disclosure of this response for any purpose.

4 87. In response to paragraph 87 of the SAC, Defendants hereby assert the
5 privilege against self-incrimination under the Fifth Amendment of the United States
6 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
7 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
8 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
9 the assertion of the privilege, to seek leave to amend and/or supplement this response
10 accordingly, and to object to the use or disclosure of this response for any purpose.

11 88. In response to paragraph 88 of the SAC, Defendants hereby assert the
12 privilege against self-incrimination under the Fifth Amendment of the United States
13 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
14 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
15 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
16 the assertion of the privilege, to seek leave to amend and/or supplement this response
17 accordingly, and to object to the use or disclosure of this response for any purpose.

18 89. In response to paragraph 89 of the SAC, Defendants hereby assert the
19 privilege against self-incrimination under the Fifth Amendment of the United States
20 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
21 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
22 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
23 the assertion of the privilege, to seek leave to amend and/or supplement this response
24 accordingly, and to object to the use or disclosure of this response for any purpose.

25 90. In response to paragraph 90 of the SAC, Defendants hereby assert the
26 privilege against self-incrimination under the Fifth Amendment of the United States
27 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
28 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that

1 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
 2 the assertion of the privilege, to seek leave to amend and/or supplement this response
 3 accordingly, and to object to the use or disclosure of this response for any purpose.

4 91. In response to paragraph 91 of the SAC, Defendants hereby assert the
 5 privilege against self-incrimination under the Fifth Amendment of the United States
 6 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
 7 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
 8 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
 9 the assertion of the privilege, to seek leave to amend and/or supplement this response
 10 accordingly, and to object to the use or disclosure of this response for any purpose.

11 92. In response to paragraph 92 of the SAC, Defendants hereby assert the
 12 privilege against self-incrimination under the Fifth Amendment of the United States
 13 Constitution, the Federal Rules of Evidence, Rule 501; the California Constitution, Art. 1,
 14 Sec. 15; and the California Evidence Code § 940. To the extent Defendants determine that
 15 there is no longer potential for criminal prosecution, Defendants reserve the right to withdraw
 16 the assertion of the privilege, to seek leave to amend and/or supplement this response
 17 accordingly, and to object to the use or disclosure of this response for any purpose.

18 **FOR THEIR AFFIRMATIVE DEFENSES, THESE ANSWERING**
 19 **DEFENDANTS ALLEGE AS FOLLOWS:**

20 **FIRST AFFIRMATIVE DEFENSE**

21 (Failure to State a Claim)

22 93. As a first, separate and distinct affirmative defense, and solely by way of
 23 an alternative defense, not to be construed as an admission or waiver of any kind, Defendants
 24 allege that Plaintiff's SAC, and every purported cause of action stated therein, fails to state
 25 facts sufficient to constitute a cause of action against Defendants.

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SECOND AFFIRMATIVE DEFENSE

(Contractual Limitations Period)

94. As a second and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission or waiver of any kind, Defendants allege that the SAC and each and every cause of action therein is barred by the one-year contractual limitations provision set forth in the Commission Junction Publisher Services Agreement of which Plaintiff is a third party beneficiary and which Plaintiff incorporated by reference into the eBay Supplemental Terms & Conditions.

THIRD AFFIRMATIVE DEFENSE

(Statute of Limitations)

95. As a third and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission or waiver of any kind, Defendants allege that the SAC and each and every cause of action therein is barred by the applicable statute of limitations. Said limitations include, but are not limited to, 18 U.S.C. § 1030(g), 15 U.S.C. § 15b (as applied to 18 U.S.C. §§ 1962, 1964), California Penal Code § 502(e)(5), California Code of Civil Procedure §§ 338, 339, and California Business & Professions Code § 17208.

FOURTH AFFIRMATIVE DEFENSE

(Improper Venue)

96. As a fourth and separate Affirmative Defense, and solely by way of an alternative defense, not to be construed as an admission or waiver of any kind, Defendants allege that the filing of this action in the above-captioned Court is improper based on the forum selection clause set forth in the Commission Junction Publisher Services Agreement of which Plaintiff is a third party beneficiary and which Plaintiff incorporated by reference into the eBay Supplemental Terms & Conditions.

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FIFTH AFFIRMATIVE DEFENSE

1
2 (Consent)

3 97. As a fifth and separate Affirmative Defense, and solely by way of an
4 alternative defense, not to be construed as an admission or waiver of any kind, Defendants
5 allege that the SAC and each and every cause of action therein is barred because any such
6 conduct as alleged in the SAC was consented to by Plaintiff.

SIXTH AFFIRMATIVE DEFENSE

7
8 (Authorization)

9 98. As a sixth and separate Affirmative Defense, and solely by way of an
10 alternative defense, not to be construed as an admission or waiver of any kind, Defendants
11 allege that the SAC and each and every cause of action therein is barred because any such
12 conduct as alleged in the SAC was known, authorized, and encouraged by Plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

13
14 (Estoppel)

15 99. As a seventh and separate Affirmative Defense, and solely by way of an
16 alternative defense, not to be construed as an admission or waiver of any kind, Defendants
17 allege that the SAC and each and every cause of action therein is barred because Plaintiffs acts,
18 omissions, representations and conduct constitute an estoppel, and bar its claims.

EIGHTH AFFIRMATIVE DEFENSE

19
20 (Waiver)

21 100. As an eighth and separate Affirmative Defense, and solely by way of an
22 alternative defense, not to be construed as an admission of waiver of any kind, Defendants
23 allege that the SAC and each and every cause of action therein is barred because Plaintiff has
24 waived any and all claims it has made against Defendants.

NINTH AFFIRMATIVE DEFENSE

25
26 (Laches, Unclean Hands, Acquiescence, Ratification, Assumption of the Risk)

27 101. As a ninth and separate Affirmative Defense, and solely by way of an
28 alternative defense, not to be construed as an admission or waiver of any kind, Defendants

1 allege that the SAC and each and every cause of action therein is barred by the doctrine of
2 laches, unclean hands, acquiescence, ratification, and reasonably implied assumption of the
3 risk.

4 **TENTH AFFIRMATIVE DEFENSE**

5 (No Damages Suffered)

6 102. As a tenth and separate Affirmative Defense, and solely by way of an
7 alternative defense, not to be construed as an admission or waiver of any kind, Defendants
8 allege that the SAC and each and every cause of action therein is barred because Plaintiff never
9 sustained any damages caused by Defendants, and Plaintiff lacks standing.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 (Damages Not Subject to Reasonable Calculation)

12 103. As an eleventh and separate Affirmative Defense, and solely by way of
13 an alternative defense, not to be construed as an admission or waiver of any kind, Defendants
14 allege that the SAC and each and every cause of action therein is barred because Plaintiff's
15 damages, if any, are not subject to reasonable calculation.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 (Failure to Mitigate Damages)

18 104. As a twelfth and separate Affirmative Defense, and solely by way of an
19 alternative defense, not to be construed as an admission or waiver of any kind, Defendants
20 allege that the SAC and each and every cause of action therein is barred because Plaintiff failed
21 to exercise reasonable resourcefulness, care and diligence to mitigate any damages, and any
22 recovery against Defendants should be reduced accordingly.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 (In Pari Delicto)

25 105. As a thirteenth and separate Affirmative Defense, and solely by way of
26 an alternative defense, not to be construed as an admission or waiver of any kind, Defendants
27 allege that the SAC and each and every cause of action therein is barred by the doctrine of
28 in pari delicto.

FOURTEENTH AFFIRMATIVE DEFENSE

2 (Plaintiff's Negligence)

3 106. As a fourteenth and separate Affirmative Defense, and solely by way of
4 an alternative defense, not to be construed as an admission or waiver of any kind, Defendants
5 allege that the SAC and each and every cause of action therein is barred because Plaintiff's
6 damages, if any, were caused by Plaintiff's own negligence or want of ordinary care and
7 prudence.

FIFTEENTH AFFIRMATIVE DEFENSE

9 (Intervening/Superseding Actions)

10 107. As a fifteenth and separate Affirmative Defense, and solely by way of an
11 alternative defense, not to be construed as an admission or waiver of any kind, Defendants
12 allege that the SAC and each and every cause of action therein is barred to the extent that the
13 damages or losses allegedly sustained by Plaintiff, if any, were the direct and proximate result
14 of intervening and superceding actions on the part of other parties, and not Defendants, barring
15 Plaintiff's recovery from Defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

17 (No Intent to Injure)

18 108. As a sixteenth and separate Affirmative Defense, and solely by way of an
19 alternative defense, not to be construed as an admission or waiver of any kind, Defendants
20 allege that the SAC and each and every cause of action therein is barred because Defendants at
21 no time acted with any intent to injure Plaintiff, and the Defendants took no actions intended to
22 cause any harm to Plaintiff.

SEVENTEENTH AFFIRMATIVE DEFENSE

24 (No Willful, Malicious, Oppressive or Outrageous Conduct)

25 109. As a seventeenth and separate Affirmative Defense, and solely by way of
26 an alternative defense, not to be construed as an admission or waiver of any kind, Defendants
27 allege that Defendants did not engage in any willful, malicious, oppressive or outrageous
28 conduct with regard to Plaintiff.

EIGHTEENTH AFFIRMATIVE DEFENSE

2 (Adequate Legal Remedy)

3 110. As an eighteenth and separate Affirmative Defense, and solely by way of
4 an alternative defense, not to be construed as an admission of waiver of any kind, Defendants
5 allege that Plaintiff's prayer for injunctive relief is barred because Plaintiff has an adequate
6 remedy at law.

NINETEENTH AFFIRMATIVE DEFENSE

8 (Any Harm Proximately Caused by Others)

9 111. As a nineteenth and separate Affirmative Defense, and solely by way of
10 an alternative defense, not to be construed as an admission, Defendants allege that the SAC and
11 each and every cause of action therein is barred because any losses, damages and/or injuries
12 sustained by Plaintiff were proximately caused by the fault of persons or entities other than
13 Defendants, over whom Defendants have no control.

TWENTIETH AFFIRMATIVE DEFENSE

15 (Good Faith)

16 112. As a twentieth and separate Affirmative Defense, and solely by way of an
17 alternative defense, not to be construed as an admission of waiver of any kind, Defendants
18 allege that the SAC and each and every cause of action therein is barred because Defendants
19 have acted in good faith.

TWENTY-FIRST AFFIRMATIVE DEFENSE

21 (Setoff)

22 113. As a twenty-first and separate Affirmative Defense, and solely by way of
23 an alternative defense, not to be construed as an admission of waiver of any kind, Defendants
24 allege that Plaintiff's damages, if any, are subject to setoff and should be reduced accordingly.

TWENTY-SECOND AFFIRMATIVE DEFENSE

26 (Indispensable Party)

27 114. As a twenty-second and separate Affirmative Defense, and solely by way
28 of an alternative defense, not to be construed as an admission of waiver of any kind,

1 Defendants allege that the SAC and each and every cause of action therein is barred because
2 Plaintiff has failed to join an indispensable party or parties to this action.

3 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

4 (Plaintiff's Agents)

5 115. As a twenty-third and separate Affirmative Defense, and solely by way
6 of an alternative defense, not to be construed as an admission of waiver of any kind,
7 Defendants allege that the SAC and each and every cause of action therein is barred based on
8 the actions and/or omissions of Plaintiff's own agents.

9 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

10 (Reservation of Right to Assert Additional Defenses)

11 116. As an twenty-fourth and separate Affirmative Defense, and solely by way
12 of an alternative defense, not to be construed as an admission, Defendants allege that at the
13 time of the filing of this Answer, affirmative defenses may not have been alleged for reasons
14 that insufficient facts and information were available after reasonable inquiry. Defendants
15 therefore reserve the right to amend this answer to allege additional affirmative defenses based
16 upon subsequent discovery of new or different facts or subsequent appreciation of currently
17 known facts.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Defendants Kessler's Flying Circus, Thunderwood Holdings,
20 Inc., Brian Dunning and BrianDunning.com pray as follows:

21 1. That Plaintiff take nothing by its Complaint;
22 2. That the Complaint be dismissed with prejudice;
23 3. That Defendants be awarded his costs of suit, including reasonable
24 attorneys' fees;

25 / / /

26 / / /

27 / / /

28 / / /

1 4. That Defendants have such other, further and different relief as this
2 Court deems just and proper.
3

4 DATED: September 9, 2009

Respectfully submitted,

5 RUS, MILIBAND & SMITH
A Professional Corporation

6 By: 
7 RONALD RUS
8 Attorneys for Defendants
9 THUNDERWOOD HOLDINGS, INC.,
10 BRIAN DUNNING and
11 BRIANDUNNING.COM

12 DATED: September 9, 2009

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14 By:  for PKM
15 PATRICK K. McCLELLAN
16 Attorney for Defendant
17 KESSLER'S FLYING CIRCUS
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1 CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that the foregoing:

3 **ANSWER TO SECOND AMENDED COMPLAINT**

4 was filed with the Court's Electronic Filing System on September 9, 2009 and may be accessed
5 electronically.

6

7 s/ Leo J. Presiado

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